

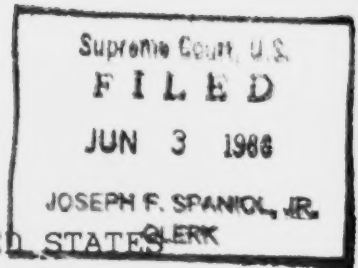
87-1996

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987



LESTER AYARS,

DOROTHY AYARS. PETITIONERS,

v.

U.S. GOVERNMENT, et.al., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

LESTER AYARS (pro-se)  
437 HOWARD STREET  
MILLVILLE N.J. 08332

OF COUNSEL:  
SOLICITER GENERAL  
DEPT: of JUSTICE  
WASHINGTON D.C. 20530

48 P/P



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IN THE  
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OCTOBER TERM 1987

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LESTER AYARS.  
DOROTHY AYARS. PETITIONER.

v.

U.S. GOVERNMENT et. al. RESPONDENT.

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THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

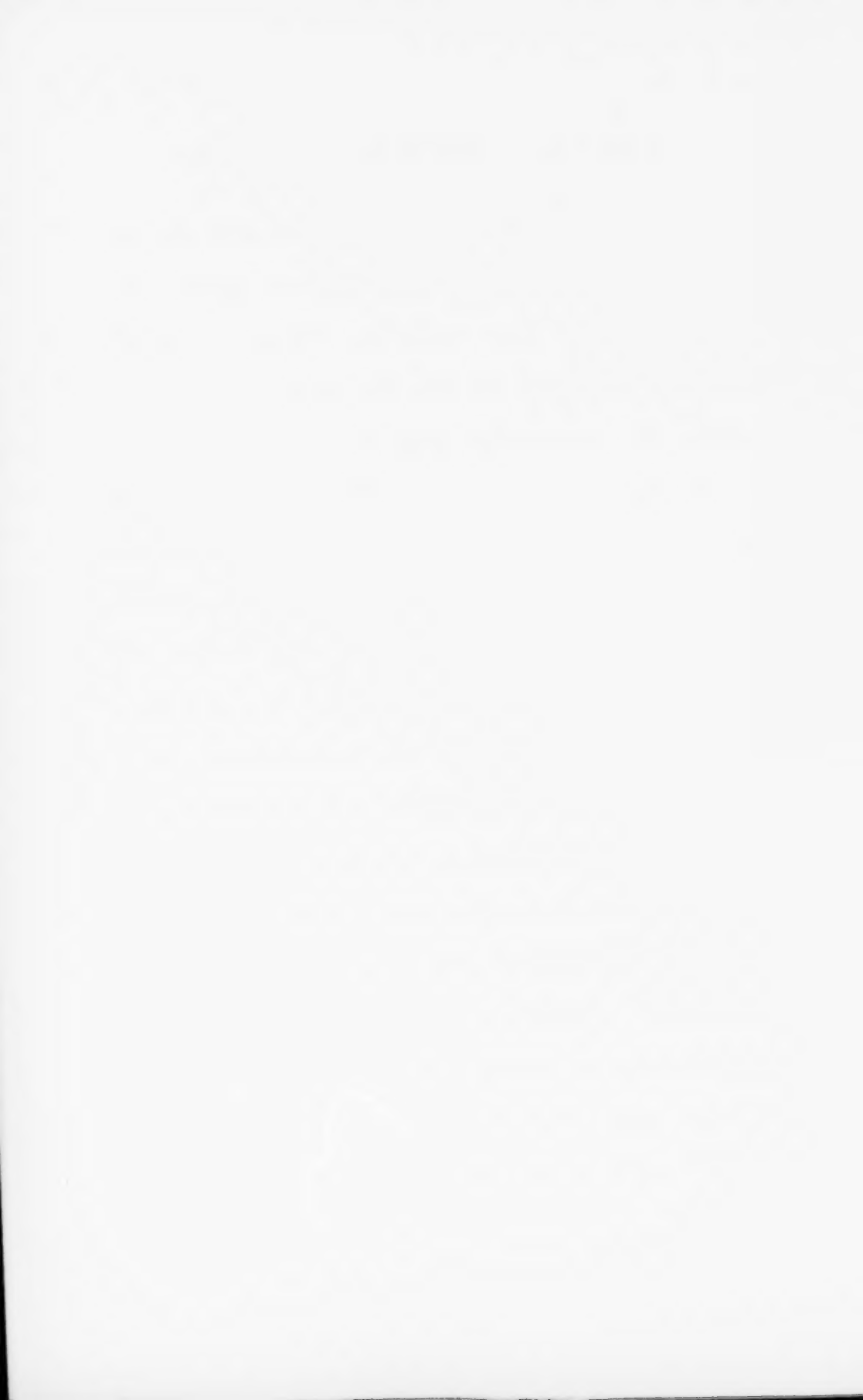
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LESTER AYARS  
437 HOWARD STREET  
MILLVILLE N.J. 08332  
TEL. 609 327 2617



## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals denied the Petitioners their right of appellate review over the federal Constitutional claims alleged by it in this proceeding when it affirmed the District Court's "letter opinion" judgment?
2. Whether the Petitioners' Federal and State Constitutional Rights have been violated?
3. In holding that conclusory allegations of malice or unconstitutional acts are not adequate to withstand a motion to dismiss because government officials are shielded from liability under qualified immunity unless their conduct violates clearly established statutory or constitutional right, does not this "letter opinion" and order complained of:



(a ). Authorize a taking of Petitioners' property, without just compensation, in violation of the Fifth and/or Fourteenth Amendments to the Constitution of the United States?

(b). Deny the Petitioners' First Amendment right to petition the Government for redress of grievances?

(c). Authorize the defendants' to seize property without probable cause and without any Warrants and/or Court Orders?

#### LIST OF PARTIES

1. PETITIONERS- Lester Ayars, Dorothy Ayars.
2. RESPONDENTS- United States Government, Dept. of Treasury, Internal Revenue Service, Roscoe L. Egger Jr., Cornelious J. Coleman, Bob G. Hughes, C.R. Clark, D. Holt, Donald A. Somerset, Nina McGlone, D.A. Rosa, D. Mattalioni.





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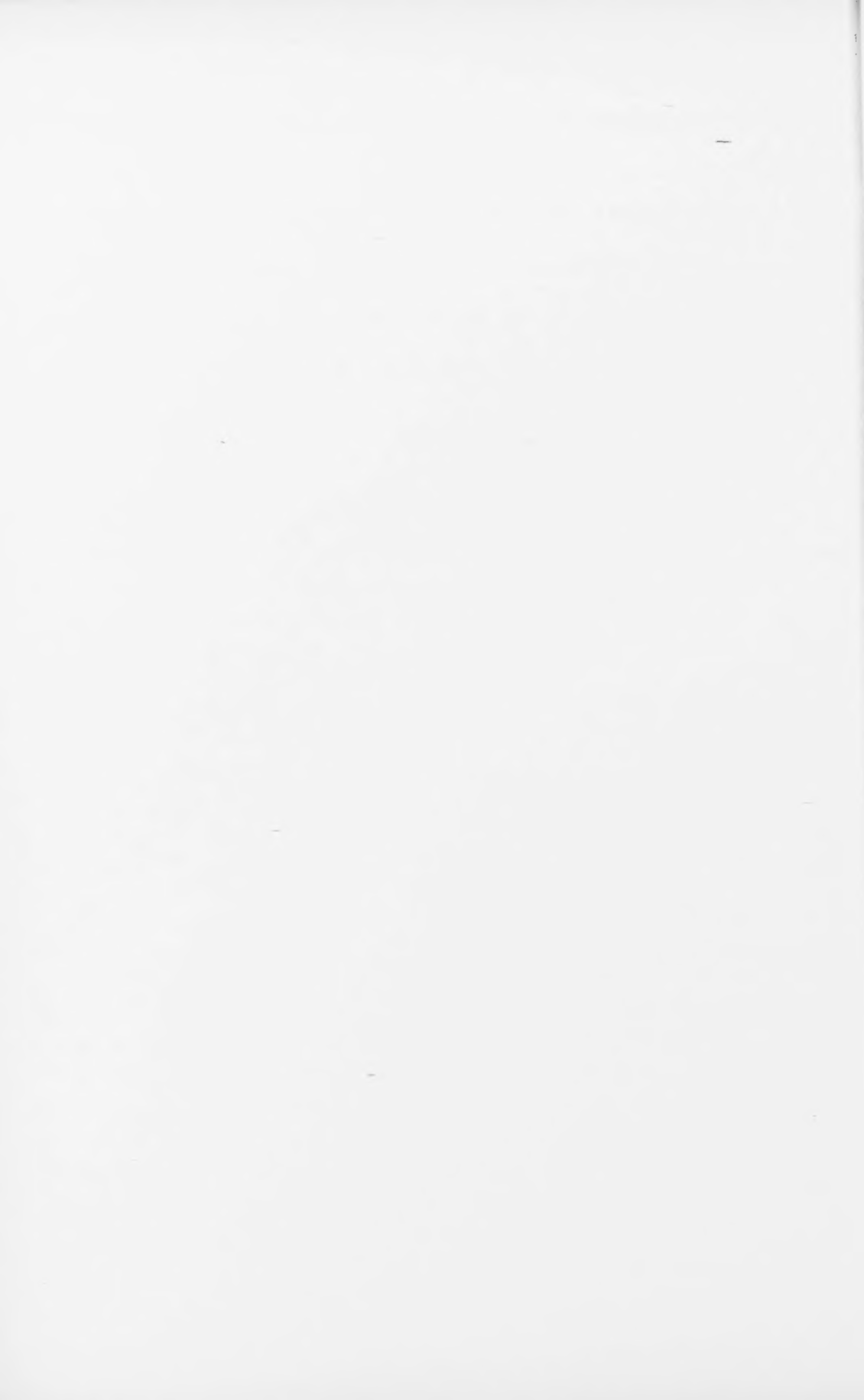
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LESTER AYARS  
DOROTHY AYARS, Petitioners  
v.  
UNITED STATES GOVERNMENT, et.al.  
Respondents.

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PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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The Petitioners, Lester and Dorothy Ayars, respectfully request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Curcuit entered on the 7th day of March, 1988.



### OPINIONS BELOW

The Judgment-Order of the Court of Appeals (app. A) affirming the District Courts Order for denial of default judgment and dismissing the complaint, was not published, but can be found at 87-5703. The "letter opinion" of the District Court is not published, but can be found at 87-0062(SSB), App. A.

### JURISDICTION

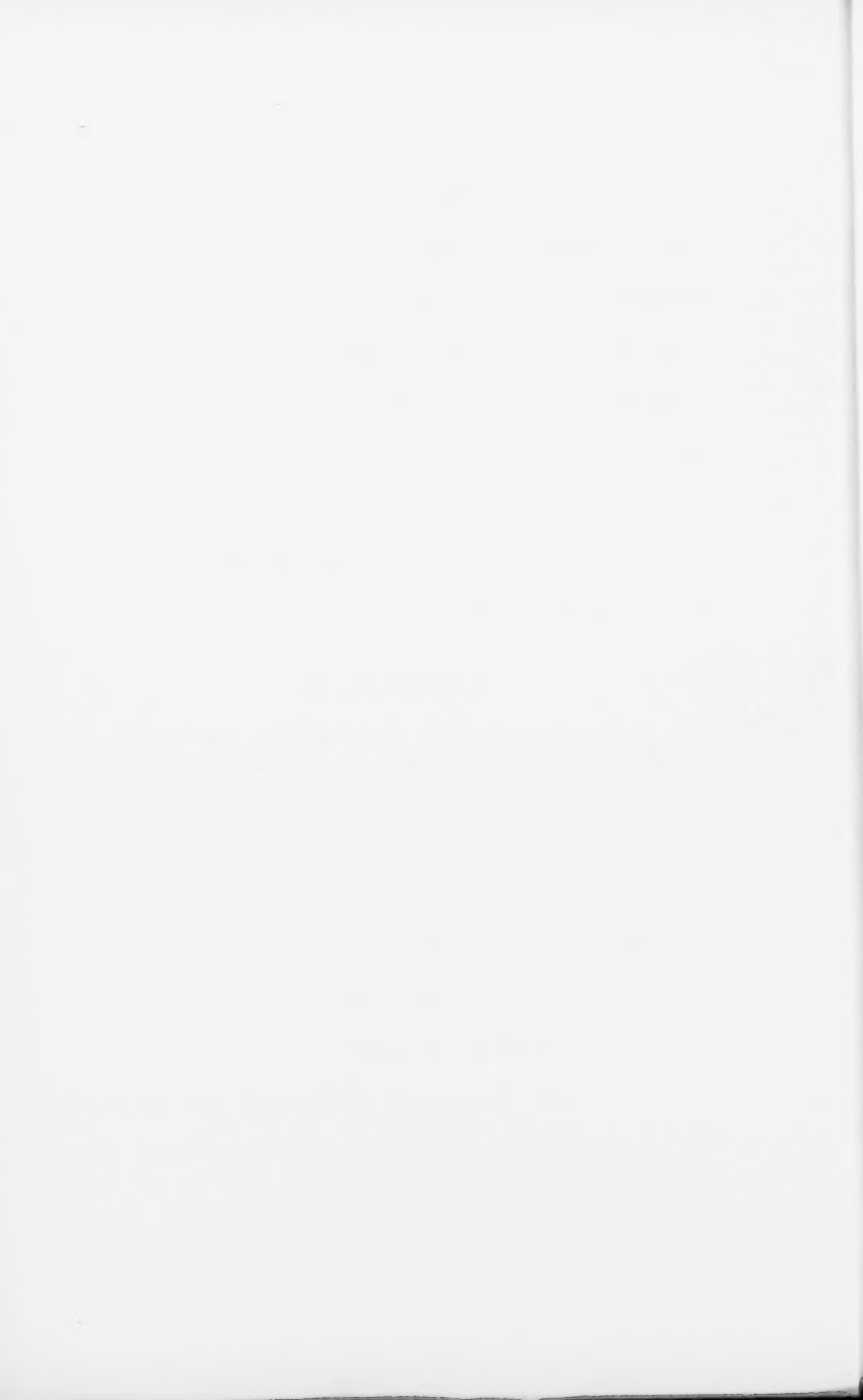
The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

The opinion of the Court of Appeals was issued on the 07th day of March, 1988.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

26 U.S.C. 7605(b) states:

NO taxpayer shall be subjected to unnecessary examinations or investigations...



28 U.S.C. 1254(1) provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:  
(1). By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

The First Amendment to the United States Constitution provides in pertinent part:

The right to petition the Government for a redress of grievances.

The Fourth Amendment to the United States Constitution provides in pertinent part:

The Right of the people to be secure in their ...persons, and effects, against unreasonable



searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause...

The Fifth Amendment to the United States Constitution provides in pertinent part:

NO person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Seventh Amendment to the United States Constitution states in pertinent part:

In Suits at common law, where the value in controversy shall exceed twenty (20) dollars, the right of trial by Jury shall be reserved, and no fact tried by





a jury, shall be otherwise reexamined in any courts of the United States, than according to the rules of common law.

The Ninth Amendment to the United States Constitution states in pertinent part:

The enumeration in the Constitution, of certain rights, shall not be construed — to deny or disparage others retained by the people.

The Fourteenth Amendment to the United States Constitution states in pertinent part:

...No State shall make or enforce any law which ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

—



jurisdiction the equal  
protection of the laws.

Federal Rules of Civil Procedure:

Rule 55. Default.

(a). Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b). Judgment. Judgment by default may be entered as follows:

(1). By the clerk. When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs



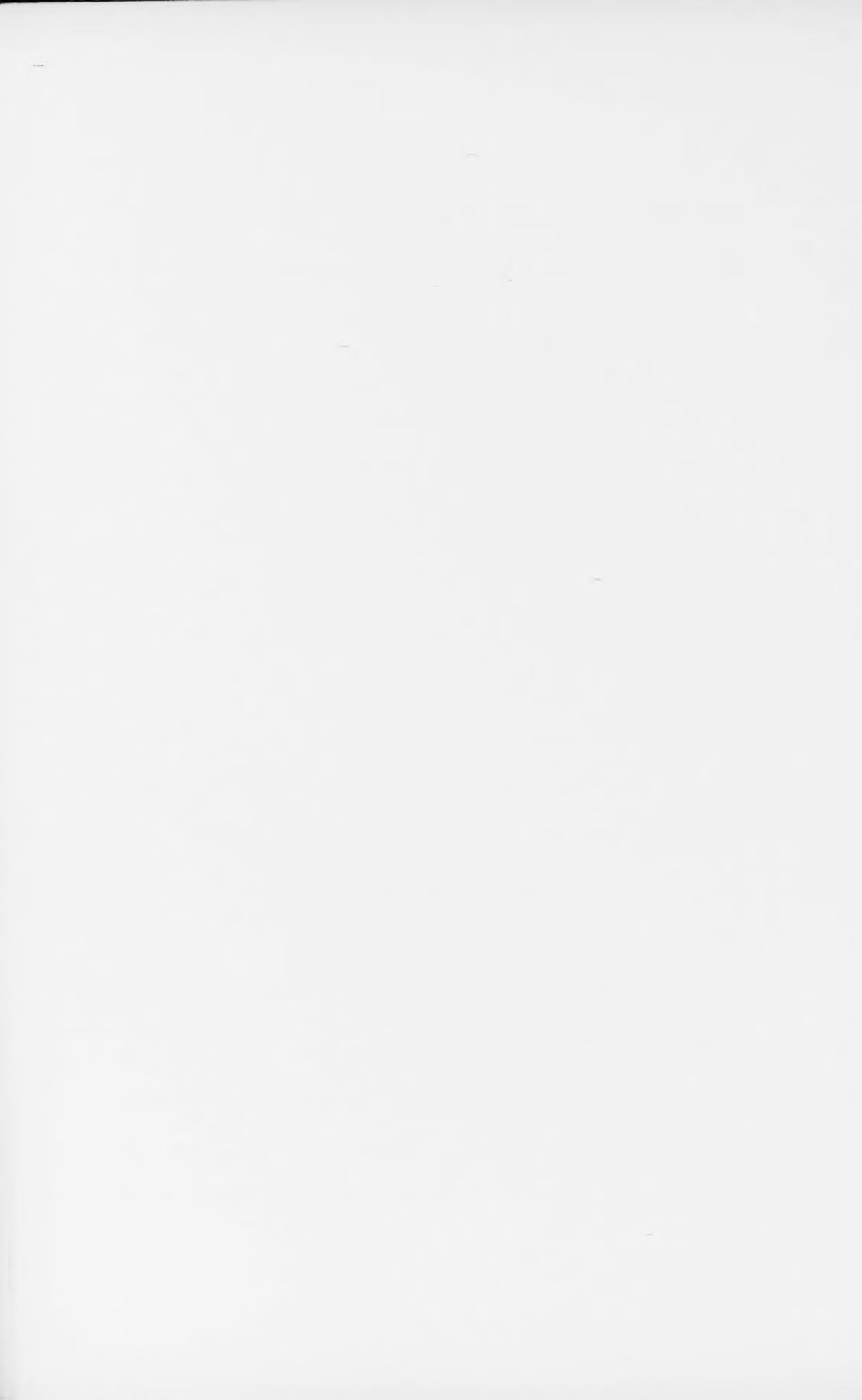
against the defendant, if he has been defaulted for failure to appear and he is not an incompetent person.

#### STATEMENT

On 07 March 1988, the Third Circuit Court of Appeals ADJUDGED AND ORDERED that the judgment of the district court be affirmed. A Petition for Rehearing was not submitted as the Court of Appeals has stated that only in rare cases have they granted rehearing in banc where the case was decided by a judgment order...

This action was originally filed in the United States District Court in Camden N.J. under 42 U.S.C. 1985(3), for Constitutional violations.

The Petitioners' claim arose when they were asked to submit to an examination of their individual income tax return for



the year 1982. The examination request was originated by defendant C.R.Clark. Mr. Clark denied certain deductions on the petitioners "1040" form. The deductions were denied because as Mr. Clark stated, on Form 886-A (explanation of items), "You did not submit any verification of the amount claimed, therefore they have been disallowed". The form is signed by Mr. Clark and is dated on the 9th of November, 1984. The fact that the deductions were not verified is because the petitioners were not scheduled for the examination until the 20th of November, 1984. The overzealous determination of Mr. Clark was made (11) eleven days before the scheduled examination. In addition, Mr. Clark has used compelled testimony, the petitioners individual income tax return, as a





foundation for his determination of additional taxes. This activity violates the petitioners Fifth Amendment Right of the Constitution!

In addition, the petitioners received a unsigned correspondence from Internal Revenue Service, (form 6641), stating that there was a audit of their return for the year 1983 and additional taxes were due. The petitioners did NOT receive any Notice. of any type, notifying them to come to the examination to verify the items in question. The conclusory allegations that the petitioners incurred an additional liability for the years 1982 and 1983, were included in one statement, a Federal Tax Lien and a Notice of Levy. The additional amount alleged to be due was taken from the petitioners (Dorothy) paychecks. The examinations all took



place without probable cause and without any code section that authorizes examinations. Most of the petitioners paychecks were seized, all except approximately ( 75.00) seventy-five dollars a week, without a warrant, court order or any judicial or jury determination. The only decision to a additional amount due was from a low-echelon revenue agent, employed with an administrative agency! The District Court has ordered that Government officials are shielded under qualified immunity unless their conduct violates clearly established statutory or constitutional rights. And, allegations of unnecessary examination, probable cause, and coercion do not rise to the level of clearly established violations. The District Court also ordered that the



petitioners did not state a claim for a constitutional deprivation officially or individually at the hands of the defendants. Additionally, the complaint was dismissed as to all defendants, and the petitioners default judgment was denied.

By affirming the United States District Courts' "letter-opinion", The Third Circuit Court of Appeals refused to consider the Constitutional issues raised by the Petitioners" and has effectively denied the petitioners' right of appellate review over the Federal Constitutional claims.

#### REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to review the decision of the United States Court of Appeals for the Third Circuit because:



1). By affirming the District Courts "letter opinion" decision upon qualified immunity, probable cause, failing to state a claim for constitutional deprivation, and dismissing the complaint as to all defendants, and denying the petitioners motion for default, the Court of Appeals effectively denied the petitioners appellate review over their Federal Constitutional claims.

2). The case laws the District Court exercised, such as immunity, failure to state claim, etc., violates their guaranteed Right to redress the government for grievances, the Taking Clause, their right to substantive and procedural due process clause and equal protection under the laws.





The Harlow Doctrine Of Qualified Immunity  
Violates The Petitioners Right To Redress  
The Government For Grievances.

In Harlow v. Fitzgerald, 457 U.S. 800, the court said that "Qualified immunity is an affirmative defense that must be pleaded by a defendant official". This defense has both a "objective" and "subjective" aspect, Gomez v. Toledo, 446 U.S. 635 (1980). Federal officials who seek exemption for personnel liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption. The individual defendants did not answer or respond to the petitioners complaint, nor have they submitted anything which supports their "good faith and reasonable beliefs" claim for qualified immunity. This court has held, 91 S.Ct. at 2012, that if as the



Government argues, all officials exercising discretion were exempt from personnel liability, a suit under the Constitution could provide NO redress to the injured citizen, nor would it in any degree deter federal officials from committing Constitutional wrongs. The Courts have held that even the President of The United States of America is not immune from law suits, U.S. v. Nixon, 418 U.S. 683. U.S. v. Lee 1 S.Ct. 261. As this matter now stands, the petitioners are without a remedy for a unconstitutional invasion of their rights by federal agents. The District Court also stated that conclusory allegations of malice or unconstitutional acts are not adequate to withstand a motion to dismiss because of the immunity doctrine. To the contrary, the Court has



held that the defendants can make a conclusory allegation of an alleged amount to be due, without any factual foundation whatsoever. In addition, the District Court did not state any rule of the Federal Rules of Civil Procedure that authorizes their final decision. The clearly established statutory and Constitutional rights of the petitioners have been violated and the Court of Appeals has refused to consider the federal Constitutional claims raised by the petitioners, and effectively denied said petitioners their right to appellate review. Because of the importance of the immunity doctrine to both the vindication of constitutional guarantees and the effective functioning of government, certiorari should be granted.



The Petitioners Complaint Should Not Have  
Been Dismissed For Failure to State a  
Constitutional Claim.

The Petitioners did, in fact, state a Constitutional claim, and a cause of action, under the Fourth and Fifth Amendment, *Bivens v. Six unknown named agents*, 91 S.Ct 1999. The individual defendant C.R.Clark has denied the petitioners their procedural due process rights as described in the complaint. In addition, the petitioners stated a claim and a cause of action under 42 U.S.C. 1985(3). Despite the Courts recognition in *Bivens*, the Third Circuit Court of Appeals effectively denied the petitioners their right of federal appellate review of Constitutional issues.





The District Court Incorrectly Denied The  
Petitioners Right For Default Judgment.

The Petitioners have effected proper service of summons and complaint upon the individual named defendants. The defendants did not answer the complaint as required within the allotted amount of time the law provides. In fact, the defendants have failed to plead or otherwise defend themselves as provided by the Federal Rules of Civil Procedure. The defendants only response was when the petitioners filed for default judgment, and the District Court upheld all of the defendants statements and answers to the complaint long after the 60 day time frame expired. The Petitioners are entitled to default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure, and the District Court failed



to state what, if any rule, authorizes the Court to deny such Judgment. In addition, the complaint was dismissed as to all the defendants. It is beyond belief how the Courts can hold this dismissal when the individual defendants failed to answer or defend themselves in this action. Under the decisions of the District Court and the Court of Appeals, the Petitioners have effectively been denied their right of federal appellate review over the Constitutional claims that are raised in this proceeding.

Injunctive relief should not have been  
denied

On 06th of March, 1987, the Petitioners requested injunctive relief, and the District Court denied such citing *Bob Jones University v. Simon*, 416 U.S. 725, and 26 U.S.C. 7421(a). The taxes that



were deemed owing in Jones v. Simon were unemployment and Social Security taxes, not "1040 taxes" alleged to be owing by the Petitioners. In order for a assessment to be valid, numerous procedural steps must be followed, and the tax must be proved to be due by the assessment officer. The petitioners have paid their tax once for the years 1982 and 1983. These are the dates in question by the defendants. An assessment has been made once, by the petitioners, and this amount has been and paid in full. However, the defendants have determined otherwise, and have taxed the petitioners again, for a second time, for an alleged amount due, with no foundation of fact. As this matter now stand, the Petitioners have been deprived of their personal property without due process of law. The



Anti-Injunction Act does not apply in this case as the defendants have not produced that a lawful assessment has been made on Form 23C. It has long been settled that the general prohibition of 26 U.S.C. 7421(a) is subject to exception in the case of an individual taxpayer against a particular collector where the tax is clearly illegal or other special circumstances of an unusual character make an appeal to equitable remedies appropriate. *National Foundry Co. v. Director*, 229 F.2d 149. The unusual circumstances in the Petitioners case is their deductions were disallowed without the right to verify them, and by the defendants stating that the petitioners were liable for a "1040" tax, to which there is no such tax. In addition, the Petitioners have been denied their right





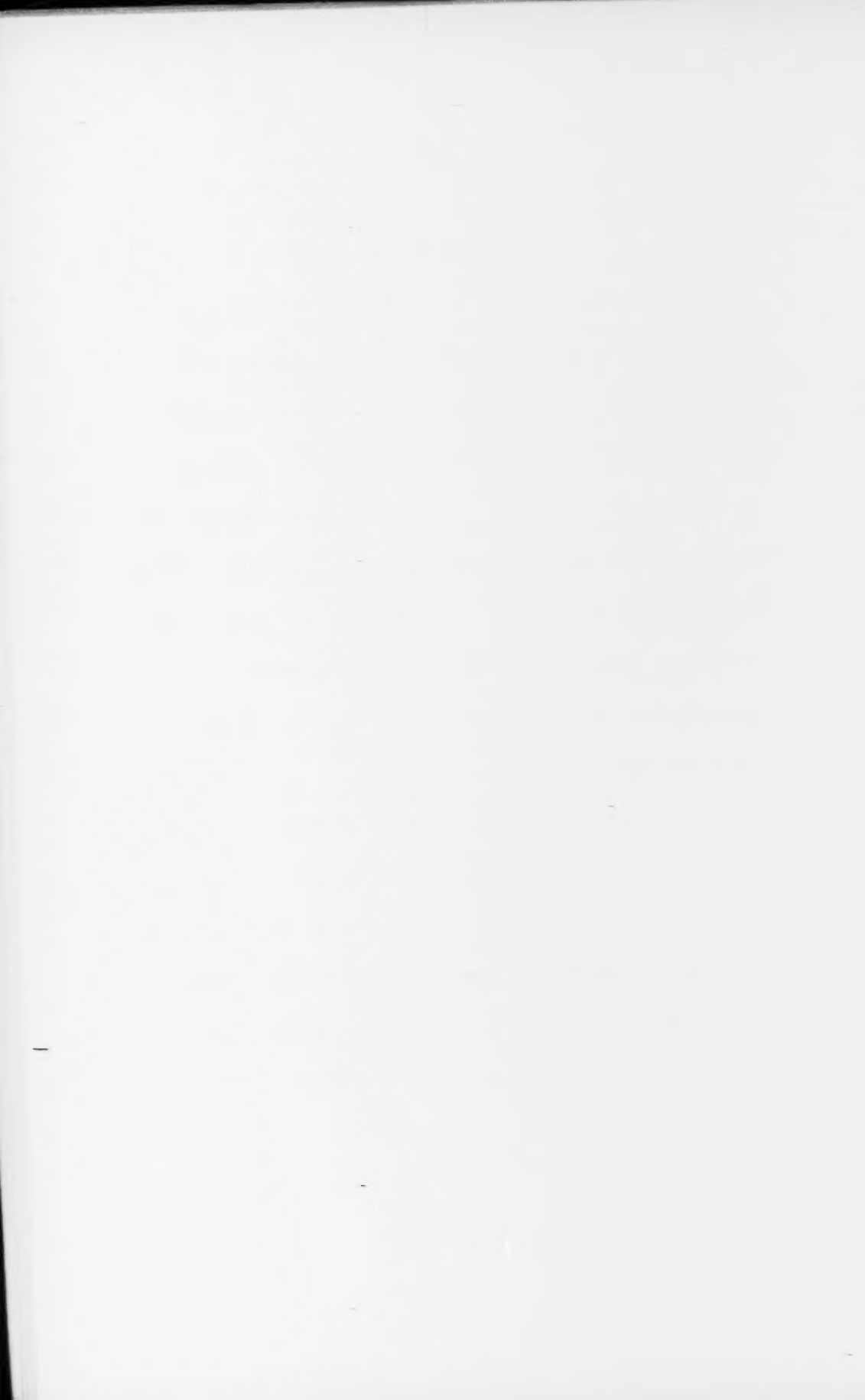
of a jury trial, as guaranteed by the Seventh Amendment, to determine if the petitioners do owe the Government an alleged amount. By affirming the District Court based on these statutes, the Court of appeals have denied the petitioners their right of appellate review over the federal constitutional claims raised by it in this proceeding.



### CONCLUSION

The federal constitutional claims raised by the Petitioners in this proceeding are substantial and serious. By refusing to consider them based upon immunity principles, the Third Circuit Court of Appeals effectively denied the Petitioners their right of appellate review over the federal constitutional and statutory claims raised by them in this proceeding.

The Petitioners, Lester and Dorothy Ayars, respectfully submits that certiorari should be granted to review the decisions of the United States Court of Appeals for the Third Circuit and the District Court for the District of New Jersey.



28

*Lester Ayars*

Lester Ayars

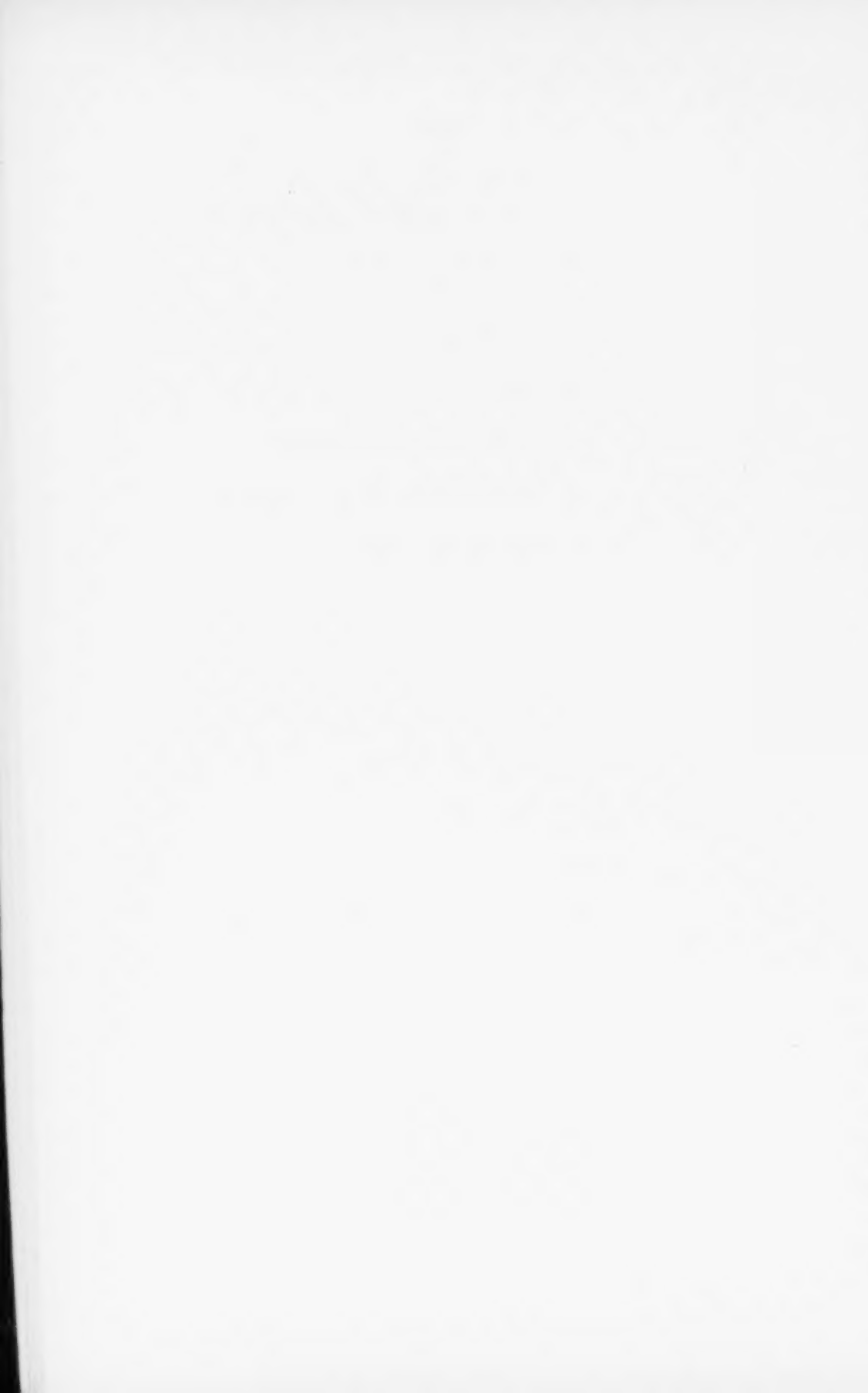
*Dorothy L Ayars*

Dorothy Ayars

437 Howard Street

Millville N.J. 08332

02/June 1988



## CERTIFICATE OF SERVICE

It is hereby certified that service of this Petition for Writ of Certiorari has been made on the appellees by certified mail, on this 3rd day of June, 1988, properly addressed to the following:

Solicitor General  
Dept. of Justice.  
Washington, D.C. 20530

Roscoe L. Egger Jr.  
IRS Center  
Holtsville N.Y.

Bob G. Hughes  
IRS Center  
Holtsville N.Y.

D.Holt  
IRS Center  
Holtsville N.Y.

Nina Mcglone  
IRS Center  
Holtsville N.Y.

Donald Somerset  
IRS Center  
Holtsville N.Y.

D.A.Rosa  
IRS Center  
Newark N.J.

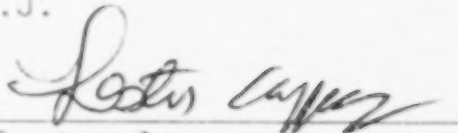




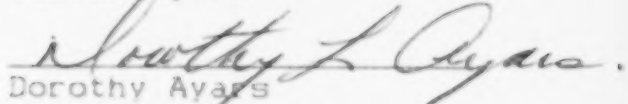
Corneilius Coleman  
IRS Center  
Newark N.J.

D. Mattalioni  
IRS Center  
Newark N.J.

C.R. Clark  
IRS Center  
Atlantic City N.J.

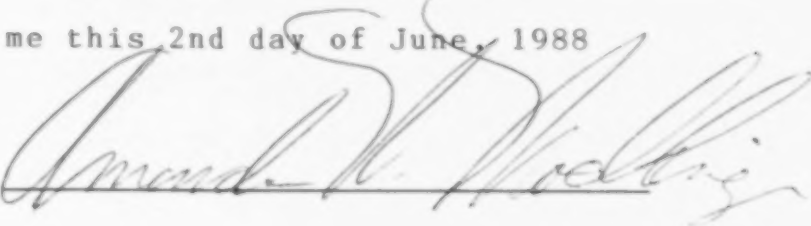


Lester Ayars



Dorothy Ayars  
437 Howard Street  
Millville N.J. 08332

Subscribed and sworn to before  
me this 2nd day of June, 1988



AMANDA W. WODLINGER  
A Notary Public of New Jersey  
My Commission Expires July 23, 1991



UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

August 12, 1987

"Letter Opinion" filed on the 12th of August, 1987.

Re: AYARS v. U.S. GOVERNMENT, etc., et al.  
Civil Action #87-0062(SSB)

Dear Litigants:

This matter comes before the court on the motion of plaintiffs for a default judgment and the motion of defendants for dismissal. The dismissal motion was filed by defendants United States Government Internal Revenue Service ("IRS"), and IRS officials Cornelius Coleman, D. Holt, Donald A. Somerset, C.R. Clark, Bob G. Hughes, Nina McGlone, and Roscoe L. Egger, Jr. Defendants Ross and Mattalioni are unknown to the responding defendants. For the reasons stated below, defendants'



motion is granted and plaintiffs' complaint is dismissed.

Plaintiffs' pro-se complaint is brought pursuant to 42 U.S.C. 1985(3), and alleges constitutional violations pursuant to an IRS investigation and assessment of taxes in 1984 and continuing through 1986. Plaintiffs seeks declaratory relief, injunctive relief, and damages.

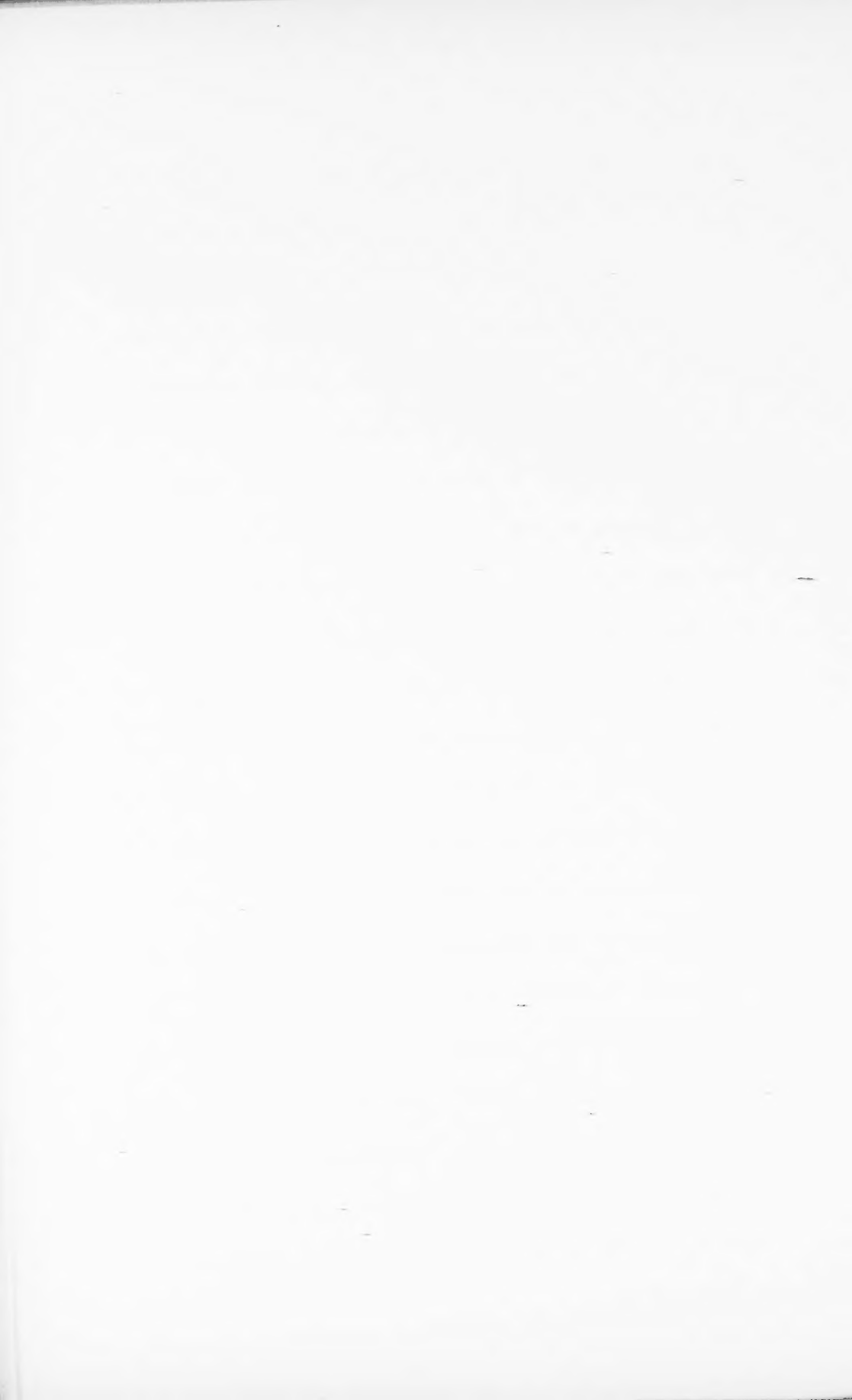
This court denied plaintiffs' request for preliminary relief after hearing oral argument, order dated March 12, 1987.

Plaintiffs complaint fails to state a claim for a constitutional deprivation, the complaint describes the ministerial acts of an IRS investigation and tax assessment. Conclusory allegations of malice or unconstitutional acts are not adequate to withstand a motion to dismiss. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1981) (Government officials



are shielded from liability under qualified immunity for civil damages unless their conduct violates "clearly established statutory or constitutional rights". Allegations of "unnecessary examination", "no probable cause to examine", and "coercion", do not rise to the level of clearly established violations. They do not state a claim for a constitutional deprivation at the hands of the defendants acting in either an official or individual capacity. *Cameron v. IRS*, 773 F.2d 126,129, (7th Cir. 1985).

The court notes that any relief plaintiffs may be entitled to under their allegations as stated, is provided for by Congress under the tax code. See 26 U.S.C. 6213, 6532, 7422. Injunctive relief from a tax proceeding is not allowed. 26 U.S.C. 7421(a); *Bob Jones University v. Simon*, 416 U.S. 725, 738 (1973). Because plaintiffs complaint





fails to state a constitutional claim, the motion to dismiss is granted pursuant to Fed. R. Civ. P. 12(b)(6). Conley v. Gibson, 355 U.S. 41, 44-45(1958). The complaint is dismissed as to all defendants. Plaintiffs motion for a default judgment is denied. An appropriate order will be entered.

Sincerely,

Stanley S. Brotman

U.S.D.J.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

LESTER and DOROTHY AYARS, :Civil #87-0062

Plaintiffs, :

v. : O R D E R

U.S. Govt. Dept. of :

Treasury, Internal :

Revenue Service, Roscoe :

L. Egger Jr., Cornelius :

J. Coleman, Bob G. Hughes, :

C.R.Clark, D.Holt,Donald :

H.Somerset, Nina McGlone :

D.A. Ross, D.Mattalioni, :

Defendants.

This matter having been brought before  
the court; and

The court having reviewed the  
submissions of the parties; and

For the reasons stated in the court's  
letter opinion filed this date,

IT IS on this 12th day of August, 1987,  
hereby



ORDERED that the motion of the defendants for dismissal is GRANTED pursuant to Fed. R. Civ. P. 12(b)(6), and the complaint is DISMISSED; and it is

FURTHER ORDERED that the motion of plaintiffs for a default judgment is DENIED. NO COSTS.

STANLEY S. BROTMAN

U.S.D.J. -



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO: 87-5703

LESTER AYARS,

DOROTHY AYARS,            APPELLANTS

v.

U.S. Govt., Dept. of Treasury, Internal  
Revenue Service, Roscoe L. Egger Jr.,  
Cornelius J. Coleman, Bob G. Hughes,  
C.R.Clark, D. Holt, Donald A. Somerset,  
Nina McGlone, D.A.Ross, D. Mattalioni,

Appeal from the United States District

Court for the District of New

Jersey-Camden (D.C. Civil No: 87-0062)

District Judge: Honorable Stanley S.

Brotman.

Submitted

March 03, 1988

Before: MANSMANN, HUTCHINSON, and HUNTER,

Circuit Judges.

JUDGMENT ORDER





After consideration of all contentions  
raised by the appellants, it is  
ADJUDGED AND ORDERED that the Judgment of  
the district court be and is hereby  
affirmed. Costs taxed against appellants.

BY THE COURT,

Carol Mahsmann

Circuit Judge

Attest:

Sally Mrvos, Clerk

March 07, 1988